

1 Title 5. EDUCATION

2 Division 1. State Department of Education

3 Chapter 3. Handicapped Children

4 Subchapter 1. Special Education

5 Article 7. Procedural Safeguards

6  
7 *Add §§ 3088.1 and 3088.2 to read:*

8 **§ 3088.1. Sanctions: Withholding Funds to Enforce Special Education Compliance.**

9 (a) When a district, special education local plan area, or county office of education fails  
10 to comply substantially with a provision of law regarding special education and related  
11 services, the superintendent may withhold funds allocated to such local agency under  
12 Chapter 7.2 (commencing with Section 56836) of Part 30 of the Education Code and the  
13 Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.). Such noncompliance  
14 may result from failure of the local agency to substantially comply with corrective action  
15 orders issued by the Department of Education in monitoring findings or complaint  
16 investigation reports. "Substantial noncompliance" means an incident of significant failure to  
17 provide a child with a disability with a free appropriate public education, a history of chronic  
18 noncompliance in a particular area, or a systemic agency-wide problem of noncompliance.

19 (b) Prior to withholding funds, the department shall provide written notice to the local  
20 educational agency, by certified mail, of the noncompliance findings that are the basis of the  
21 Department's intent to withhold funds. The notice shall also inform the local agency of the  
22 opportunity to request a hearing to contest the findings and the proposed withholding of  
23 funds.

24 (c) The notice shall include the following information:

25 (1) The specific past and existing noncompliance that is the basis of the withholding of  
26 funds.

1       (2) The efforts that have been made by the Department to verify that all required  
2       corrective actions have been taken.

3       (3) The specific actions that must be taken by the local educational agency to bring it  
4       into compliance by an exact date to avoid the withholding of funds.

5       (d) The local educational agency shall have 30 calendar days from the date of the notice  
6       to make a written request for a hearing. The department shall schedule a hearing within 30  
7       days of receipt of a request for hearing, and notify the local agency of the time and place for  
8       hearing. A hearing officer with experience in special education and with administrative  
9       hearing procedures shall be assigned by the department to conduct the hearing and make  
10       an audio recording of the proceeding. The hearing officer may grant continuances of the  
11       date for hearing for good cause.

12       (e) The local education agency shall have the opportunity, prior to the hearing, to obtain  
13       all documentary evidence maintained by the Department's Special Education Division that  
14       supports the findings of noncompliance at issue in the notice of intent to withhold funds.

15       (f) Technical rules of evidence shall not apply to the hearing, but relevant written  
16       evidence or oral testimony may be submitted, as appropriate. Local education agencies may  
17       be represented by counsel and the hearings will be open to the public.

18       (g) If a hearing is not requested, the Department shall withhold funds as stated in the  
19       notice. If a hearing is held, a written decision shall be rendered within 30 calendar days  
20       from the date the hearing is held.

21       NOTE: Authority cited: Section 33031, Education Code. Reference: Section 56845(a),  
22       Education Code.

23  
24       **§ 3088.2. Enforcement and Withholding of Funds.**

25       (a) The hearing officer shall determine, based on the totality of the evidence, whether a  
26       preponderance of the evidence supports the Department's findings of noncompliance and  
27       the determination that withholding of funds is appropriate in the particular circumstances of

1 the case. The hearing officer's decision shall be the final decision of the Department of  
2 Education.

3 (b) If the Superintendent of Public Instruction determines, subsequent to withholding  
4 funds, that a local educational agency has made substantial progress toward compliance  
5 with the state law, federal law, or regulations governing the provision of special education  
6 and related services to individuals with exceptional needs, the superintendent may apportion  
7 the state or federal funds previously withheld to the local educational agency.

8 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 56845(b),  
9 Education Code.